

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BARBARA THOMAS, individually and on  
behalf of all other persons similarly situated,

*Plaintiff,*

VS.

FINANCIAL CORPORATION OF  
AMERICA,

*Defendant*

CIVIL ACTION NO.

3:19-CV-0152-E

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**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiff's Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement of the above-captioned matter between Plaintiff, Barbara Thomas ("Plaintiff"), and Defendant, Financial Corporation of America (hereinafter referred to as "FCOA"), as set forth in the Class Action Settlement Agreement between Plaintiff and Defendant (the "Settlement Agreement"), and the Court being fully advised in the premises, the Court hereby finds and orders as follows:

1. Unless defined herein, all defined terms in this Order have the respective meanings ascribed to the same terms in the Settlement Agreement.

2. The Court has conducted a preliminary evaluation of the Settlement Agreement. Based on this preliminary evaluation, the Court finds the Settlement Agreement meets all applicable requirements of Fed. R. Civ. P. 23 for settlement purposes

only, including that the Settlement Class is sufficiently numerous, there are questions of law and fact common to members of the Settlement Class that predominate over any individual issues, the representative parties fairly and adequately protect the interests of the class, and class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds: (i) there is good cause to believe the settlement is fair, reasonable, and adequate, (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the settlement.

4. Pursuant to Fed. R. Civ. P. 23(b)(2), and for settlement purposes only, the Court certifies the following Settlement Class, consisting of individual persons within the United States (1) to whom FCOA placed, or caused to be placed, a call, (2) directed to a number assigned to a cellular telephone service, but not assigned to the intended recipient of Defendant's calls, (3) by using an automatic telephone dialing system or an artificial or prerecorded voice, (4) from January 18, 2015 through the date of this Order (*i.e.* the Class Period). Excluded from the Settlement Class are (1) the Judge presiding over this action (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families, and (2) FCOA, FCOA's subsidiaries, parent companies, successors, predecessors, and any entity in which FCOA or its parents have a controlling interest and its current or former officers, directors, and employees.

5. For settlement purposes only, the Court hereby appoints Plaintiff, Barbara Thomas, as Class Representative for the Settlement Class.

6. For settlement purposes only, the Court hereby appoints the following attorneys as Class Counsel and finds that they are competent and capable of exercising the responsibilities of Class Counsel:

Gary Klinger  
Mason Lietz & Klinger, LLP  
227 W. Monroe Street, Suite 2100  
Chicago, IL 60606  
312-283-3814  
Email: gklinger@masonllp.com

Jared Ellzey, Jr., Esq.  
Hughes Ellzey LLP  
1105 Milford St.  
Houston, Texas 77006

7. On July 13, 2020 at 10:00 a.m., this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement, and to determine whether: (a) final approval of the Settlement Agreement should be granted, and (b) Class Counsel's application for attorney's fees and expenses, and an incentive award to the Class Representative, should be granted. No later than June 15, 2020, Plaintiff must file her papers in support of Class Counsel's application for attorneys' fees and expenses and her papers in support of final approval of the Settlement Agreement and in response to any objections.

8. Pursuant to the Settlement Agreement, First Class, Inc., is hereby appointed as Settlement Administrator and must perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

9. The Court approves the proposed plan for giving Notice to the Settlement Class, which includes the implementation of publication media campaigns and the creation of the Settlement Website, as fully described in the Settlement Agreement. The plan for giving Notice, in form, method, and content, fully complies with the requirements of due process and is due and sufficient notice to all persons entitled thereto. The Court hereby directs the Parties and Settlement Administrator to provide Notice no later than May 26, 2020 (the “Notice Deadline”).

10. Any member of the Settlement Class who intends to intervene and object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (i) the Settlement Class Member’s full name and current address, (ii) the cellular telephone number the Settlement Class Member believes received the telephone call(s) at issue, (iii) a statement that he or she believes himself or herself to be a member of the Settlement Class, (iv) the specific grounds for the objection, (v) all documents or writings that the Settlement Class Member desires the Court to consider, (vi) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (vii) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed and postmarked no later than the Objection Deadline, as defined in the Settlement Agreement, which is no later than 30 days after the Notice Deadline identified in Paragraph 9 of this Order.

11. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, will not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and will be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and will be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

12. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement Agreement and this Order, are not and will not in any event be described as, construed as, offered or received against the Released Parties as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Released Party of the truth of any fact alleged by Plaintiff; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the Released Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff. Notwithstanding, nothing contained herein may be construed to prevent a Party from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement Agreement.

13. The certification of the Settlement Class is binding only with respect to the settlement of the Action. In the event the Settlement Agreement fails to become effective,

is overturned on appeal, or does not become final for any reason, the Parties will be restored to their respective positions in the Action as of the date of the signing of the Settlement Agreement, and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto may be made for any purpose.

**SO ORDERED.**

Signed May 6, 2020.

A handwritten signature in black ink, appearing to read 'Ada Brown', is written over a horizontal line.

Ada Brown

UNITED STATES DISTRICT JUDGE